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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 United States of America, ) No. CV 09-1111-PHX-MHM (LOA)  
10 Plaintiff, ) No. CR 07-940-PHX-MHM  
11 v. ) **ORDER**  
12 Emigdio Sicaeros-Heras, )  
13 Defendant/Movant. )  
14

15 Movant Emigdio Sicaeros-Heras, who is confined in the Corrections Corporation of  
16 America's California City Correctional Center in California City, California has filed a *pro*  
17 *se* "Motion for Time Reduction by an Inmate in Federal Custody under Title 28 U.S.C.  
18 § 2255" ("Motion"). The Court will deny the Motion with leave to amend.

19 **I. Failure to Use the Court-Approved Form**

20 The Rules Governing Section 2255 Proceedings for the United States District Courts  
21 allow the Court, by local rule, to prescribe a form to be used for filing a § 2255 motion. See  
22 Rule 2(c), Rules Governing Section 2255 Proceedings, foll. 28 U.S.C. § 2255. Under this  
23 Court's local rule, Movant must use the court-approved form when filing a *pro se* motion  
24 pursuant to 28 U.S.C. § 2255. See LRCiv 3.5(a). Movant has not used the court-approved  
25 form.

26 The Court may, in its discretion, forgo the requirement that a movant use a court-  
27 approved form. See LRCiv 3.5(a). The Court will require use of the court-approved form  
28 because Movant's Motion does not substantially comply with the court-approved form.

1 Therefore, the Motion will be denied with leave to file an amended motion within 30 days.

## 2 **II. Leave to Amend**

3 Within 30 days, Movant may submit an amended motion on the court-approved form.  
4 The Clerk of Court will mail Movant a court-approved form to use for filing an amended  
5 motion. Movant must submit the amended motion on the court-approved form and sign it  
6 under penalty of perjury. If Movant fails to file an amended motion within 30 days from the  
7 date of filing of this Order, the Court will dismiss this § 2255 action without further notice  
8 to Movant. If Movant fails to use the court-approved form, the Court may strike the  
9 amended motion and dismiss this § 2255 action without further notice to Movant.

10 Movant must clearly designate on the face of the document that it is an “Amended  
11 Motion.” The amended motion must be retyped or rewritten in its entirety on a court-  
12 approved form and may not incorporate any part of the original Motion by reference.  
13 Movant must describe each ground for relief and the facts supporting each ground.

14 An amended motion supersedes an original motion. See Ferdik v. Bonzelet, 963 F.2d  
15 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546  
16 (9th Cir. 1990). After amendment, the Court will treat an original motion as nonexistent.  
17 Ferdik, 963 F.2d at 1262. Any ground for relief that was raised in the original Motion is  
18 waived if it is not raised in an amended motion. See King v. Atiyeh, 814 F.2d 565, 567 (9th  
19 Cir. 1987).

## 20 **III. Warnings**

### 21 **A. Address Changes**

22 Movant must file and serve a notice of a change of address in accordance with Rule  
23 83.3(d) of the Local Rules of Civil Procedure. Movant must not include a motion for other  
24 relief with a notice of change of address. Failure to comply may result in dismissal of this  
25 § 2255 action.

### 26 **B. Copies**

27 Movant must submit an additional copy of every filing for use by the Court. See  
28 LRCiv 5.4. Failure to comply with this requirement may result in the filing being stricken

1 without further notice to Movant.

2 **C. Possible Dismissal**

3 If Movant fails to timely comply with every provision of this Order, including these  
4 warnings, the Court may dismiss this § 2255 action without further notice. See Ferdik, 963  
5 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any order  
6 of the Court).

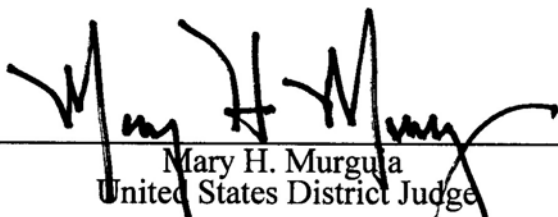
7 **IT IS ORDERED:**

8 (1) Movant's "Motion for Time Reduction by an Inmate in Federal Custody under  
9 Title 28 U.S.C. § 2255" (Doc. #1 in CV 09-1111-PHX-MHM (LOA)) is **denied with leave**  
10 **to amend**. Movant has **30 days** from the date of filing of this Order to file an amended  
11 motion in compliance with this Order.

12 (2) If Movant fails to file an amended motion within 30 days, the Clerk of Court  
13 must, without further notice, terminate Document #68 in CR 07-940-PHX-MHM and enter  
14 a judgment of dismissal of the civil action opened in connection with this § 2255 action  
15 (CV 09-1111-PHX-MHM (LOA)), without prejudice.

16 (3) The Clerk of Court must mail Movant a court-approved form for filing a  
17 Motion to Vacate, Set Aside or Correct Sentence By a Person in Federal Custody (28 U.S.C.  
18 § 2255).

19 DATED this 9<sup>th</sup> day of June, 2009.

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23 Mary H. Murgula  
24 United States District Judge  
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